

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

UNITED STATES OF AMERICA )  
 )  
 v. ) CAUSE NO. 3:08CR-121 RLM  
 )  
 RICO TORIANO KIMBROUGH (01) )

**FINDINGS AND RECOMMENDATION**  
**OF THE MAGISTRATE JUDGE**  
**UPON A PLEA OF GUILTY**

On April 23, 2009, the Honorable Robert L. Miller, Jr., Chief Judge, referred this case to the undersigned to make findings as to whether the defendant (1) is competent to enter a plea; (2) knowingly and voluntarily wishes to enter a plea to the charge(s); (3) understands the charge(s); (4) whether there exists a factual basis for the charge(s); and a recommendation as to whether a plea of guilty should be accepted by the United States District Court Judge. On **April 27, 2009** at **2:00 p.m.** (EDT), a hearing was held on the defendant's request to enter a plea of guilty.

Appearing for the United States was Assistant United States Attorney Frank E. Schaffer. Appear-  
ing for the defendant was H. Jay Stevens; the defendant was personally present. With the  
written consent of defendant, his counsel and the counsel for the United States, the undersigned  
proceeded to conduct the hearing.

In consideration of that hearing and the statements made by the defendant under oath on the record and in the presence of counsel, the remarks of the Assistant United States Attorney and of counsel for defendant,

I FIND as follows:

- (1) that defendant is competent to plead guilty;
- (2) that the defendant understands that his answers may later be used against him in a prosecution for perjury or false statement;

(3) that defendant understands the nature of the charge against him to which the plea is offered;

(4) that the defendant understands the charge and what the maximum possible sentence is, including the effect of the supervised release term, and defendant understands that the sentencing guidelines apply and that the Court may depart from those guidelines under some circumstances;

(5) that the defendant understands his right to trial by jury, to persist in his plea of not guilty, to the assistance of counsel at trial, to confront and cross-examine adverse witnesses, and his right against compelled self-incrimination; to appeal his conviction, if convicted, and that the defendant has knowingly and voluntarily waived those rights, and wishes to plead guilty.

(6) that the plea of guilty by the defendant has been knowingly and voluntarily made and is not the result of force or threats or of promises apart from the plea agreement between the parties; and,

(7) that there is a factual basis for the defendant's plea.

In light of those findings, I now recommend that; (1) the Court accept the defendant's plea of guilty (2) that the defendant be adjudged guilty of **Counts 1 and 2** of the Indictment, in violation of Title 18 U.S.C. §2113(d) and 2 and, Title 18 U.S.C. §924(c) and have sentence imposed. A Presentence Report has been ordered. Should this Report and Recommendation be accepted and the Defendant adjudged guilty, sentencing has been scheduled for **July 15, 2009 at 9:00 a.m.** (EDT), before Chief Judge Robert L. Miller, Jr. Sentencing memorandum and any motions shall be filed no later than **July 8, 2009**. Objections to the Findings and Recommendation are waived unless filed and served within ten (10) days. 28 U.S.C. § 636(b)(1)(B).

DATED: April 27, 2009

s/Christopher A. Nuechterlein  
Christopher A. Nuechterlein  
United States Magistrate Judge